

## CALIFORNIA COASTAL COMMISSION

45 FREMONT, SUITE 2000  
SAN FRANCISCO, CA 94105-2219  
VOICE AND TDD (415) 904-5200  
FAX (415) 904-5400



# Item W14, W15, W16. & W17

**Staff:** AM-SF  
**Staff Report:** 8/25/2004  
**Hearing Date:** 9/8/2004

## STAFF RECOMMENDATIONS AND FINDINGS FOR CEASE AND DESIST AND RESTORATION ORDERS

**CONSENT CEASE AND DESIST  
ORDER TO HEADLAND  
PROPERTIES ASSOCIATES, LP:**

CCC-04-CD-08

**CEASE AND DESIST ORDER TO  
JOSEPH FRYZER:**

CCC-04-CD-09

**CONSENT RESTORATION ORDER  
TO HEADLAND PROPERTIES  
ASSOCIATES, LP:**

CCC-04-RO-02

**RESTORATION ORDER TO JOSEPH  
FRYZER:**

CCC-04-RO-03

**RELATED VIOLATION FILE:**

V-5-01-045

**PROPERTY LOCATION:**

Lot G (a dedicated and deed restricted open space lot) and Lot 41 of Tract 32184 in the Palisades Highlands area of Pacific Palisades in the City of Los Angeles

**DESCRIPTION OF PROPERTY:**

1. Lot G: The portion of property that was not accepted by the State of California or the City of Los Angeles in the original Offer to Dedicate;
2. Lot 41 of Tract 32184

**PROPERTY OWNER:**

Headland Properties Associates, LP

**PERSONS SUBJECT TO THESE  
ORDERS:**

1. Headland Properties Associates, LP and
2. Joseph Fryzer

**VIOLATION DESCRIPTION:**

Unpermitted development, including 1) unpermitted construction of an

approximately 1,040 cubic yard capacity debris basin, 2) unpermitted demolition of the unpermitted basin by removal of a concrete lining and filling approximately half of the unpermitted basin with earth creating an extension of a flat building pad, and 3) unpermitted placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension. This development violates the terms and conditions of Coastal Development Permit A-381-78 (as amended) and a recorded open space deed restriction.

**SUBSTANTIVE FILE DOCUMENTS:**

- 1) Coastal Development Permit A-381-78, A1 through A12
- 2) Commission Adopted Findings for denial of CDP A-381-78-A13
- 3) Notice of Intent to Commence Cease and Desist and Restoration Order Proceedings, February 20, 2003
- 4) Background Exhibits 1-14

**CEQA STATUS:**

Exempt (CEQA Guidelines (CG) §§ 15060(c)(2) and (3)) and Categorically Exempt (CG §§ 15061(b)(2), 15307, 15308 and 15321).

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**I. SUMMARY OF STAFF RECOMMENDATION**

Staff recommends that the Commission approve Cease and Desist and Restoration Orders (as described below) to remove unpermitted development located on portions of Lot G and Lot 41 of Tract 32184 in the City of Los Angeles ("subject property") and to restore the impacted areas by means of restorative grading and revegetation of the impacted area with native plant species associated with this segment of the Santa Monica Mountains. In addition, the Cease and Desist Order directed to Joseph Fryzer will include the requirement to allow Headland Properties Associates, LP (hereinafter "Headland") access across his property (Lot 81) to reach Lot 41 and Lot G to undertake removal of unpermitted development and restoration of the site.

Headland has agreed to settling this matter through Consent Cease and Desist and Restoration Orders, as described in the attached Consent Orders, and Headland is cooperating and will be voluntarily both remedying the violation and paying a fine. Mr. Fryzer has not settled this matter or agreed to a Consent Order and staff is seeking issuance of a regular Cease and Desist and Restoration Order against the non-cooperating party, Mr. Fryzer.

The subject properties are located on an open space, deed restricted area at the head of a canyon in the southern portion of the Santa Monica Mountains. The properties are directly adjacent to Topanga State Park in the Palisades Highlands area of the Pacific Palisades in the City of Los Angeles, (Exhibit #1). Temescal Ridge, a prominent ridgeline in Topanga State Park and the Santa Monica Mountains is located above the area of unpermitted development. Atop this ridge is the Temescal Ridge Trail (one of many public hiking trails in Topanga State Park).

In September 2001, Commission staff confirmed that the unpermitted construction of an approximately 1,040 cubic yard capacity debris basin and partial fill of the basin had occurred on lands that were both deed restricted for open space and intended to be dedicated to State Parks (Exhibit #3). These lands are owned by Headland. It appears that Headland constructed the original unpermitted debris basin and the adjacent property owner, Mr. Fryzer, had then filled the basin to extend his flat building pad and yard, an extension of Lot 81, Tract 32184. After receiving a Notice of violation from Commission staff directing Headland and Mr. Fryzer to submit a permit application to retain the unpermitted development after-the-fact, Headland and Mr. Fryzer as co-applicants, sought the after-the-fact authorization for the construction of the debris basin, the demolition of the unpermitted debris basin, and the fill of portions of the basin. The proposed project also included filling the remainder of the hole that was the debris basin with earth and the construction of a new 673 cubic yard capacity debris basin with retaining and deflection walls. All development (including the existing unpermitted development) would have been located on lands deed restricted for open space. The Commission denied this proposed project on July 8, 2002 (See Exhibit #13 for Commission adopted findings). After the Commission's denial of the application to retain the unpermitted development and without applying for or receiving a coastal development permit for any further development, Mr. Fryzer placed grass turf, palm trees, sand, fencing, and concrete paving on the denied filled basin/building pad extension, creating a small private golf pitching and putting area and an extension to Mr. Fryzer's back yard into lands both deed restricted and dedicated for open space (Exhibit #14). Therefore, additional development was constructed on top of the previously denied unpermitted development, again, without benefit of a Coastal Development Permit or amendment to the underlying Coastal Development Permit A-381-78, as amended.

In order to issue a Cease and Desist Order under Section 30810 of the Coastal Act, the Commission must find that the activity that is the subject of the order has occurred

either without a required coastal development permit (CDP) or in violation of a previously granted CDP. In order to issue a Restoration Order under section 30811 of the Coastal Act, the Commission must find that development 1) has occurred without a coastal development permit, 2) is inconsistent with Chapter 3 of the Coastal Act, and 3) is causing continuing resource damage.

The unpermitted activity that has occurred on the subject property clearly meets the definition of “development” set forth in Section 30106 of the Coastal Act. The development was undertaken without a coastal development permit, in violation of Public Resources Code 30600. In addition, the unpermitted development is inconsistent with Coastal Development Permit A-381-78, as amended. Lot 41, which is owned by Headland, is deed restricted for open space and located within Tract 32184. The underlying CDP required Lot 41 to remain as a private open space area maintained by the Homeowners Association. Lot G is located outside Tract 32184 on lands that are deed restricted for public open space and were intended to be dedicated to either CA State Parks, the City of Los Angeles, or a private non-profit corporation (as further discussed in more detail below). The unpermitted development is located on both Lot G and Lot 41 of Tract 32184.

The unpermitted development and the ongoing maintenance of it are inconsistent with the underlying coastal development permit and the Coastal Act, including Sections 30240 (ESHA/Parks and Recreation Areas) and 30251 (Scenic Resources and Alteration of Landforms) of the Coastal Act (as fully discussed below). The unpermitted development is also causing continuing resource damage, as defined by Section 13190 of the Commission’s regulations.

The impacts caused by the unpermitted development meet the definition of damage provided in Section 13190(b) of the Commission’s administrative regulations (Title 14, Division 5.5, California Administrative Code (CCR)): “any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development.” The unpermitted development will lead to continuing degradation of the adjacent Topanga State Park and does not minimize the alteration of natural landforms.

## **II. HEARING PROCEDURES**

The procedures for a hearing on a proposed Cease and Desist Order and Restoration Order are set forth in section 13185 and 13195 of the Commission’s regulations. The Cease and Desist Order and Restoration Order hearing procedures are similar in most respects to the procedures that the Commission uses for permit and Local Coastal Program matters.

For Cease and Desist and Restoration Order hearings, the Chair shall announce the matter and request that all alleged violators or their representatives present at the hearing identify themselves for the record, indicate what matters are already part of the record, and announce the rules of the proceeding including time limits for presentations. The Chair shall also announce the right of any speaker to propose to the Commission, before the close of the hearing, any question(s) for any Commissioner, in his or her discretion, to ask of any person, other than the violator or its representative. The Commission staff shall then present the report and recommendation to the Commission, after which the alleged violator(s) or their representative(s) may present their position(s) with particular attention to those areas where an actual controversy exists. The Chair may then recognize other interested persons after which staff typically responds to the testimony and to any new evidence introduced.

The Commission will receive, consider, and evaluate evidence in accordance with the same standards it uses in its other quasi-judicial proceedings, as specified in CCR section 13185, 13186, and 13195, incorporating by reference sections 13185, 13186 and 13065. The Chair will close the public hearing after the presentations are completed. The Commissioners may ask questions to any speaker at any time during the hearing or deliberations, including, if any Commissioner chooses, any questions proposed by any speaker in the manner noted above. Finally, the Commission shall determine, by a majority vote of those present and voting, whether to issue the Cease and Desist and Restoration Orders, either in the form recommended by the Executive Director, or as amended by the Commission. Passage of a motion, per staff recommendation or as amended by the Commission, will result in issuance of the Orders.

### **III. STAFF RECOMMENDATIONS**

Staff recommends that the Commission adopt the following four motions:

Headland Properties Associates, LP

#### **1.A. Motion**

***I move that the Commission issue Consent Cease and Desist Order No. CCC-04-CD-08 pursuant to the staff recommendation.***

#### **1.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **1.C. Resolution to Issue Consent Cease and Desist Order**

The Commission hereby issues Consent Cease and Desist Order No. CCC-04-CD-08, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and that development has occurred in non-compliance with the terms and conditions of CDP No. A-381-78, as amended.

#### **2.A. Motion**

***I move that the Commission issue Consent Restoration Order No. CCC-04-RO-02 pursuant to the staff recommendation.***

#### **2.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Consent Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **2.C. Resolution to Issue Consent Restoration Order**

The Commission hereby issues Consent Restoration Order number CCC-04-RO-02, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

Joseph Fryzer

#### **3.A. Motion**

***I move that the Commission issue Cease and Desist Order No. CCC-04-CD-09 pursuant to the staff recommendation.***

#### **3.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Cease and Desist Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

### **3.C. Resolution to Issue Cease and Desist Order**

The Commission hereby issues Cease and Desist Order No. CCC-04-CD-09, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit and that development has occurred in non-compliance with the terms and conditions of CDP No. A-381-78, as amended.

#### **4.A. Motion**

***I move that the Commission issue Restoration Order No. CCC-04-RO-03 pursuant to the staff recommendation.***

#### **4.B. Staff Recommendation of Approval**

Staff recommends a **YES** vote. Passage of this motion will result in issuance of the Restoration Order. The motion passes only by an affirmative vote of a majority of Commissioners present.

#### **4.C. Resolution to Issue Restoration Order**

The Commission hereby issues Restoration Order number CCC-04-RO-03, as set forth below, and adopts the findings set forth below on grounds that development has occurred without a coastal development permit, the development is inconsistent with the Coastal Act, and the development is causing continuing resource damage.

### **IV. RECOMMENDED FINDINGS FOR CONSENT CEASE AND DESIST ORDER CCC-04-CD-08 AND CONSENT RESTORATION ORDER CCC-04-RO-02 & CEASE AND DESIST ORDER CCC-04-CD-09 AND RESTORATION ORDER CCC-04-RO-03**

Staff recommends the Commission adopt the following findings of fact in support of its action.

#### **A. Description of Unpermitted Development**

The unpermitted development, which is the subject matter of these Cease and Desist and Restoration Orders, consist of 1) construction of an approximately 1,040 cubic yard capacity debris basin, 2) demolition of the unpermitted basin by removal of a concrete lining, 3) fill of approximately half of the unpermitted basin with earth, creating an extension of a flat building pad, 4) and placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension for the creation of a private golf chipping and putting area. The unpermitted development lies on Lot G and Lot 41 of Tract 32184. Lot G was deed restricted and dedicated for public open space and Lot 41 was deed restricted for interior open space to be maintained by the homeowners association. The Commission, through its denial of A-381-78-A13 on July 8, 2002, has already found that the unpermitted debris basin, the unpermitted partial fill of the basin, and the request to completely fill the unpermitted basin and construct a new debris basin (as previously proposed) are inconsistent with the Chapter 3 policies of the Coastal Act. After this denial, Mr. Fryzer placed additional unpermitted development on top of and around the denied development, creating a private golf chipping and putting area and an extension of his back yard

**B. History of Commission Actions on Subject Properties**

Coastal Development Permit A-381-78 (as amended) authorized the subdivision of 1200 acres into approximately 740 residential lots, an institutional site, commercial sites, and massive grading all within an “Urban Limit Line”. The Urban Limit Line set a boundary for development, beyond which development was restricted except for minor grading to re-contour previously graded land, and paved or unpaved pathways and other incidental improvements for low intensity recreation.

The underlying coastal development permit restricted the use of land outside the designated Urban Limit Line to, among other things, minimize the alteration of natural landforms as it affects scenic habitat and recreational resources. In this case, the subject unpermitted development is located predominantly on Lot G, public open space land that is deed restricted to limit subdivisions, development, and grading. In addition, portions of the unpermitted development extend across Lot 41. Lot 41 is deed restricted to ensure the maintenance of the engineered slope area, restrict structures with the exception of certain park and maintenance related structures, and protect State Park land from the conflict of fire control needs.

A-381-78, as amended, authorized the subdivision on which Lot 41 (an open space Lot owned by Headland), Lot 81 (16670 Calle Allicante, owned by Joseph Fryzer), and Lot G (land both deed restricted and dedicated for public open space and partially owned by Headland)<sup>1</sup> are located. Permit A-381-78A allowed the subdivision of 1200 acres for 740 dwelling units but limited structural development outside the Urban Limit Line to the construction of “paved or unpaved pathways and other incidental improvements for low intensity recreation” and, under certain circumstances, “minor facilities to provide public or utility services”. The Permit required the applicant, Headland, to dedicate the area outside the urban limit line to either State Parks, a private non-profit organization approved by the Executive Director, or to the City of Los Angeles Department of Recreation and Parks and also to deed restrict the land to “[p]revent development outside the urban limit line except as permitted by this permit or for park purposes”. The findings for A-381-78A state “it is only with the dedication of these lands for permanent preservation of visual a[n]d landform resources and for public recreational use that the Commission can find the development of the four tracts on the balance most protective of significant coastal resources.”

Special Condition 1 as modified by the Commission at the time of the seventh and ninth amendment states in part:

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<sup>1</sup> Originally, A-381-78 required all lands outside the Urban Limit Line to be dedicated to the CA State Parks. The State accepted all lands outside the ULL with the exception of land approximately 200 feet from the Tract boundary. These lands were then allowed to be dedicated to the City of Los Angeles. For reasons unknown to Commission staff, the City of Los Angeles did not accept the land and the property owner, Headland Properties, retained ownership. It is on this strip of land where the unpermitted development is located. The land continues to be encumbered by a public open space deed restriction.

*“a. This permit amendment authorizes subdivision of four tracts of Palisades Highlands, for up to 740 residential units, a two-acre commercial site and a seven-acre institutional site, grading for all streets and lots, installation of drainage and utilities and construction of residential units as described in the attached Findings and Declarations. All grading, structural development, and subdivided lots shall be located entirely within the urban limit line, as described in the "Modification Exhibit" by VTN Inc shown on PH 87-4 and "Master Plan" PH 87-14, submitted by applicant to the Coastal Commission on Sept 29, 1987, and identified in the Coastal Commission files as approved applicant's Exhibits PH 87-4 and "Master Plan" PH 87-14.” (Emphasis added)*

The Commission required, in Special Condition 2 and 3, that all lots outside the urban limit line, including Lot G, be deed restricted and dedicated for public open space. These conditions were adopted in the first amendment in 1980 and have remained the same in subsequent amendments. The original applicants, Headland Properties Inc. and Gateway Properties recorded such a deed restriction in 1981. Although the State and the City of Los Angeles declined to accept the dedication of the portion of Lot G closest to the tract boundary, the permit conditions and deed restriction remain applicable.

The permit and amendments regarding the subject property were conditioned so as to comply with Sections 30210 and 30223 of the Coastal Act, which require maximum public access and recreational support; Sections 30230 and 30231, which protect watershed land, streams and water quality; Section 30240, which protects sensitive habitat; and Sections 30250 and 30252, which require the Commission to review the location and intensity of development with respect to its impacts on public access. The land that is subject to this Cease and Desist and Restoration Order lies predominantly within the area designated as public open space (Lot G), and upon which the Commission placed significant restrictions. In addition, portions of the subject unpermitted development were constructed on Lot 41 (an open space lot), which also carries significant conditions. The unpermitted development is in conflict with the conditions required on these open space lots.

### **C. History of Violation**

On May 9, 2001, Mr. Fryzer received an approval letter, Log # 32870-01, from the Department of Building and Safety for Soils and Engineering Reports “concerning the proposed elimination of a graded debris basin and construction of debris walls to contain potential debris from the hillside drainage area.” Soon after the issuance of this approval letter, Mr. Fryzer attempted to obtain from the City of Los Angeles Planning Department an exemption from permit requirements of the Coastal Act. The City contacted Commission staff for guidance. At this time, Commission staff first became aware of the existing unpermitted debris basin and its proposed alteration. Soon after

discussions with the City, Commission staff received proposed project drawings from Mr. Fryzer for the alteration of the existing unpermitted debris basin. On June 8, 2001, after review of the project plans, Commission staff sent a letter to the City of Los Angeles Planning Department and to Mr. Fryzer's representatives noting that the project was not exempt from permit requirements of the Coastal Act (See Exhibit #13, adopted findings for denial of A-381-78-A13). In addition, staff noted that the project plans included a lot line adjustment 1) for lands that appeared to be located on State Park property, and 2) for which a coastal development permit would also be required.

On June 27, 2001, Mr. Fryzer submitted Coastal Development Permit application No. 5-01-241 for the (1) resizing of a debris basin that would be located on Lot 41 of Tract 32184, and on Lot G; (2) a lot line adjustment that would merge a portion of Lot 41, designated as an open space area in map PH87-4, into Lot 81 of Tract 32184; and (3) a further lot line adjustment that would merge portions of Lot G (deed restricted for public open space and originally intended for dedication to State Parks) with the new combination of portions of Lot 41 and Lot 81. This would have transferred 10.14 acres of Lot 41 and Lot G to Mr. Fryzer. Mr. Fryzer submitted this application to the Coastal Commission as a request for a new coastal development permit. However, after review of the file and researching the underlying permit, A-381-78 as amended, the application was treated as an application to amend A-381-78-A12. On September 4, 2001, as required under the Commission's Regulations, Commission staff rejected this amendment application because "the proposed amendment would lessen or avoid the intended effect of an approved or conditionally approved permit"<sup>2</sup> because it would have, among other things, transferred deed restricted and dedicated public open space land (as required in A-381-78, as amended) to an individual for private use (See Exhibit #13).

On September 24, 2001, Commission Enforcement staff confirmed additional unpermitted development at the subject properties. Staff confirmed that further grading of the site and storage of construction material on Lot G and Lot 41 had taken place. On October 11, 2001, Mr. Fryzer and Headland, as co-applicants, submitted amendment application, A-381-78-A13 for after-the-fact authorization of 1) the demolition of an unpermitted debris basin (with the capacity to hold 1,040 cubic yards) and 2) the fill of approximately half of the demolished basin. In addition, the application requested 3) to fill the remaining half of the debris basin and 4) the construction of a 673 cubic yard capacity debris basin with retaining and deflection walls.<sup>3</sup> The entire project would require 940 cubic yards of cut and 1,882 cubic yards of fill. The existing unpermitted debris basin would be filled level with Mr. Fryzer's existing flat building pad

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<sup>2</sup> Section 13166(a) of Title 14, California Code of Regulations (CCR) provides that an amendment shall not be accepted if it lessens or avoids the intended effect of an approved or conditionally approved permit unless the applicant presents newly discovered material information, which he could not, with reasonable diligence, have discovered and produced before the permit was granted.

<sup>3</sup> Mr. Fryzer was the sole applicant originally. However, because the unpermitted and proposed development was located entirely on Headland property, Headland was required to be a co-applicant.

and single family home, creating an extension of the flat pad area of Lot 81, approximately 60 to 80 feet across Lot 41 and onto Lot G. The new containment area for the debris basin would have been located north of the existing unpermitted basin. Thus, the expanded fill pad would extend Mr. Fryzer's existing building pad onto land that was deed restricted as public open space and originally intended to be dedicated to State Parks.

On November 15, 2001, a "Notice of Violation" letter was sent to Headland and Mr. Fryzer, regarding the fact that there had been additional unpermitted development on the subject property and to notify them of the need to complete amendment application A-381-78-A13 to authorize the development after the fact or to authorize the removal of the unpermitted development (See Exhibit #13). At that time, the Commission's enforcement staff recommended that they 1) immediately cease all grading activity on the subject property and remove construction equipment and 2) submit the requested items necessary to complete the amendment application no later than January 18, 2002. Headland and Mr. Fryzer completed their amendment application and it was filed on December 28, 2001.<sup>4</sup>

The proposed amendment was presented to the Commission on July 8, 2002. On July 8, 2002, the Commission unanimously denied CDP amendment application No. A-381-78-A13. The denial was based on the findings set forth in the Staff Report presented to the Commission on July 8, 2002, attached as Exhibit #13 and incorporated herein.

On September 4, 2002, Commission staff observed a number of new, additional items of unpermitted development placed on the subject properties: 1) a golf putting/chipping grass turf and sand traps on Lot 41 and Lot G (on top of the fill of the unpermitted basin, which had been denied by the Commission), 2) additional fill between the grass turf and sand areas, 3) grass lawn on Lot 41 and Lot G, 4) approximately 8 palm trees on Lot 41 and Lot G, 5) an extension of a wrought iron fence on Lot 41 and Lot G, 5) paving on Lot 41 and 6) additional fill in the unpermitted debris basin. This new unpermitted development was placed on top of and surrounding the unpermitted development that was denied by the Commission on July 8, 2002.

#### Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings

On February 20, 2003, the Commission's statewide enforcement unit sent a *Notice of Intent to Commence Cease and Desist Order and Restoration Order Proceedings* (NOI) to Headland Properties Associates and Joseph Fryzer.

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<sup>4</sup> The Executive Director did not reject Amendment application A-381-78-A13 under § 13166(a) because the applicants alleged that there was new, material information regarding the need for drainage devices in this area to protect public safety, and because the applicant claimed that this information was not previously known and could not, with reasonable diligence, have been discovered and produced before the permit was granted.

The NOI stated:

*“The purpose of these enforcement proceedings is to resolve outstanding issues associated with the unpermitted development activities that have occurred at the subject property. Collectively, the Cease and Desist Order and Restoration Order will direct you to cease and desist from performing or maintaining any development that is subject to the permit requirements of the Coastal Act without a coastal development permit and will compel the removal of unpermitted development and restoration of the areas impacted by the unpermitted development to the condition it was in before the violation took place.”*

Commission staff scheduled Cease and Desist and Restoration Order proceedings at the Commission’s May 2003 and August 2004 hearings. The May scheduled hearing was postponed because both parties had expressed interest in resolving the violation through Consent Orders (similar to a settlement agreement). Headland presented several restoration options to Commission staff and finalized a proposed restorative grading plan to the City of Los Angeles, Department of Building and Safety. The August 2004 hearing was also postponed to finalize Consent Orders with Headland. Headland has agreed to a Consent Cease and Desist and Restoration Order, where Headland agrees to remove unpermitted development and perform restorative grading and revegetation of the site.

Since the postponement of the May 2003 scheduled Cease and Desist Order and Restoration Order proceedings, Mr. Fryzer has not expressed any interest in resolving the violation. Therefore, Commission staff continues to recommend that the Commission issue a “unilateral” Cease and Desist and Restoration Order to Mr. Fryzer.

As briefly discussed below, both the original unpermitted development and the most recent additional unpermitted development discovered on September 4, 2002, are inconsistent with and not authorized by the underlying permit and would have required a coastal development permit. The unpermitted development is clearly included in the definition of “development” (Section 30106 of the Coastal Act), and therefore requires a coastal development permit. Mr. Fryzer and Headland submitted Coastal Development Permit amendment application A-381-78-A13 to retain the unpermitted development after-the-fact and to construct a new debris basin. The Commission found the proposed amendment inconsistent with the Chapter 3 policies of the Coastal Act; and the amendment was denied.

#### **D. Basis for Issuance of Orders**

##### **Cease and Desist Order**

The statutory authority for issuance of this Cease and Desist Order is provided in §30810 of the Coastal, which states, in relevant part:

- a) *If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- b) *The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

### **Restoration Order**

The statutory authority for issuance of this Restoration Order is provided in §30811 of the Coastal, which states, in relevant part:

*In addition to any other authority to order restoration, the commission... may, after a public hearing, order restoration of a site if it finds that [a] the development has occurred without a coastal development permit from the commission... [b] the development is inconsistent with this division, and [c] the development is causing continuing resource damage.*

The following paragraphs set forth the basis for the issuance of the Cease and Desist and Restoration Orders by providing substantial evidence that the development meets all of the required grounds listed in Section 30810 and 30811 for the Commission to issue a Cease and Desist and Restoration Order.

#### **i. Development has Occurred without a Coastal Development Permit (“CDP”)**

The unpermitted development that is the subject of these Cease and Desist and Restoration Orders meet the definition of “development” contained in Section 30106 of the Coastal Act. This definition includes but is not limited to: the placement or erection of any solid material or structure; discharge or disposal of any dredged material or of any gaseous, liquid, solid, or thermal waste; grading, removing, dredging, mining, or extraction of any materials or change in the density or intensity of the use land. In this case, 1) construction of an approximately 1,040 cubic yard capacity debris basin, 2) demolition of the unpermitted basin by removal of a concrete lining, 3) fill of approximately half of the unpermitted basin with earth, creating an extension of a flat building pad, 4) and placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension are all “development” as defined by Section 30106.

Under the Coastal Act, “development” requires a coastal development permit pursuant to section 30600(a). In this case, Joseph Fryzer Headland, as co-applicants, sought

after-the-fact authorization for the construction of a 1,040 cubic yard capacity debris basin, the demolition of the unpermitted debris basin, and the fill of portions of the basin. The proposed project also included fill of the remainder of the hole that was the debris basin and the construction of a 673 cubic yard capacity debris basin with retaining and deflection walls. The entire proposed project would have required 940 cubic yards of cut and 1,882 cubic yards of fill. The Commission denied this proposed project on July 8, 2002. Between the Commission's July 8, 2002 denial and September 4, 2002, additional unpermitted development was constructed on top of the previously denied unpermitted development. Such development included placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension, creating a small private golf chipping and putting area and an extension to Mr. Fryzer's back yard. Therefore, additional development was constructed on top of the previously denied unpermitted development without benefit of a Coastal Development Permit or amendment to the underlying Coastal Development Permit A-381-78, as amended.

The subject unpermitted development is not exempt from the Coastal Act's permitting requirements. The subject unpermitted development does not qualify for any exemption from permit requirements under section 30610 of the Coastal Act and/or Title 14, California Code of Regulations Sections 13250-13253 because the development is not an improvement directly attached to an existing single family home or other structure, is not a structure normally associated with a single family home, is not a repair and maintenance activity, and even if it was, it would have a potential for significant adverse effects on coastal resources in one or more of the respects identified in Sections 13250 and 13252 of the Commission's regulations.

## **ii. Inconsistency with Terms and Conditions of Previously Issued Permit**

The special conditions included in CDP A-381-78 were designed to minimize impacts to coastal resources and ensure that the authorized development would comply with the Chapter 3 policies of the Coastal Act. These policies are more fully discussed in the staff report for CDP A-381-78, as amended (Exhibit #13).

As stated in Section B. above, Coastal Development Permit A-381-78, as amended established development limits around the outer edge of the approved subdivision (the "Urban Limit Line". Permit A-381-78A allowed the subdivision of 1200 acres for 740 dwelling units but limited structural development outside the Urban Limit Line to the construction of "paved or unpaved pathways and other incidental improvements for low intensity recreation" and (under certain circumstances) "minor facilities to provide public or utility services". The permit required the applicant to dedicate the area outside the urban limit line to State Parks (or, as later amended (A-381-78-A7), to either State Parks, a private non-profit organization approved by the Executive Director, or to the City of Los Angeles Department of Recreation and Parks) and also to deed restrict the land to "[p]revent development outside the urban limit line except as permitted by this permit of for park purposes" (Condition 3.b.). The findings for A-381-78A state "it is only

with the dedication of these lands for permanent preservation of visual ad (sic) landform resources and for public recreational use that the Commission can find the development of the four tracts on the balance most protective of significant coastal resources.”

The first amendment expanded the permitted number of dwelling units to 740 with an expanded limit of development. The findings for the first amended permit state, “[t]he project would result in permanent alteration of approximately 145 acres of the 185 acres in Tract 31935 and 32184. A firm Urban Limit Line is to be established with permanently preserved buffer areas designed to protect the integrity of the local wildlife systems from both construction and residential impacts” (emphasis added).

In the ninth amendment, the ULL was expanded because reconstructive grading was necessary to prevent landslides from occurring, creating Lots 40, 41, 42, and 43 (lots that were previously outside the urban limit line). The ninth amendment lessened the area to be dedicated but added a restriction on the use of the interior open space lots. These lots are referenced as “interior open space” lots because they were originally included in lands that were to be dedicated to the State, City, or other private, non-profit, and were identified as “open space areas”. Special Condition 2g. of the ninth amendment states.

*(2) g. Maintenance of private open space. The applicant shall demonstrate to the Executive Director that adequate legal instruments exist to maintain the slope and open space areas identified in map PH87-4. The applicant has agreed to maintain the slope areas adjacent to the development, and upon completion of development to transfer this obligation to the Homeowners' association(s) in accordance with City conditions 13j, 21, 22, and 23. Some of this land is subject to landscaping conditions and fire control setbacks. The applicant or the successor in interest shall maintain the slope areas shown on PH 87-4, and areas identified for special planting using native, fire-resistant vegetation of the Oak Savannah, Coastal sage scrub and chaparral communities, and fuel modification and erosion control techniques approved by the Executive Director.*

*Within the areas designated as slope areas on the PH87-4 plan there shall be no structures with the exception of park and maintenance facilities such as trails, drainage channels, park furniture and vehicle entry gates. The grading shall be limited to that approved in this amendment.*

*To protect State Park lands from conflict with the fire control needs of the community, Headland Properties or its successor in interest shall either redesign the lot lines so that no private lot lies closer than 200 feet from the land dedicated to the State Park system or shall develop and record on the final tract map, an easement that retains the right of entry and maintenance of privately held slope areas within 200 feet of the State Park for the homeowners association. The restriction shall prevent future homeowners from construction of combustible structures within the area identified as slope area. The easement or restrictions*

*shall be subject to the review and approval of the Executive Director be binding on heirs an assigns, and be recorded free of prior liens, and shall be valid for the duration of the subdivision.*

It is clear from the Commission's findings and permit conditions that the establishment of the Urban Limit Line and the requirement to maintain the interior open space lots were necessary to offset the subdivision's impacts to the surrounding environment. The unpermitted development is located outside the Urban Limit Line on lands that were both deed restricted and dedicated for public open space (Lot G) and on lands that were to be maintained as interior open space lots with firm restrictions on development (Lot 41). Therefore, the unpermitted development is clearly inconsistent with a permit previously issued by the Commission (A-381-78, as amended).

### **iii. Unpermitted Development is Inconsistent with the Coastal Act**

The unpermitted development meets the definition of "development" which requires a Coastal Development Permit (CDP). A CDP may be approved only when development is consistent with the resource protection policies contained in Chapter 3 of the Coastal Act. As demonstrated in the Commission's adopted findings for its denial of Coastal Development Permit amendment application A-381-78-A13 (incorporated hereto as Exhibit #13), the Commission has already found the unpermitted development to be inconsistent with the following Chapter 3 policies of the Coastal Act: Sections 30240 and 30251. The additional unpermitted development placed on top of the denied unpermitted development (grass turf, palm trees, sand, fencing, and concrete paving) is also inconsistent with Section 30240 and 30251 of the Coastal Act for the same reasons addressed in the denial of A-381-78-A13.

#### **Section 30240: Development in areas adjacent to environmentally sensitive habitat areas and parks and recreation areas.**

Section 30240 of the Coastal Act requires that development in areas adjacent to parks and recreation areas and environmentally sensitive habitat areas be sited and designed to prevent impacts, which would significantly degrade such areas. The project site is located adjacent to Topanga State Park and Temescal Ridge Trail and Trailhead. The Park and the surrounding habitat within the Santa Monica Mountains still contain large expanses of native vegetation, which is home to several avian and terrestrial species. Such vegetation includes coastal sage scrub, chaparral, scrub oak, and several other plant species endemic to the Santa Monica Mountains. The adjacent slope above the proposed project consists of chaparral and coastal sage scrub. While some areas in the Santa Monica Mountains near highly developed areas in the Pacific Palisades have lost most of the natural habitat diversity, large expanses of Topanga State Park have been left untouched by development and human interference.

The unpermitted development is located directly adjacent to Topanga State Park, on land deed restricted for open space. The recreational experience intended for this park

is an open, coastal mountain appearance. All development located adjacent to the State Park system must be sited and designed to prevent impacts that would significantly degrade such areas. Development that could occur in this area must be compatible with the park system. Such development that could be authorized are paths, trails, and trailheads, picnic areas, observation areas, and other low intensity uses associated with public parks and recreational area. The unpermitted development includes clearing and grading on deed restricted open space land adjacent to Topanga State Park and the Temescal Ridge Trail, construction of a debris basin, the demolition and partial fill of the unpermitted basin, and the construction of a private golf chipping and putting facility.

Such development is neither consistent with nor compatible to the State Park system. The unpermitted development, located almost predominantly outside a designated urban limit line and adjacent to Topanga State Park and Temescal Ridge Trail is not consistent with Section 30240 of the Coastal Act.

*Section 30251: Scenic Resources/Landform Alteration.*

The Coastal Act protects public views and the visual qualities of coastal areas and limits landform alteration that would detract from such resources. Topanga State Park surrounds the subject properties on all but the west side. In fact, the portion of Lot G on which most of the unpermitted is located was originally required to be dedicated to the State of California as open space.

The unpermitted development did not minimize the alteration of natural landforms. The unpermitted development included an extensive amount of grading to fill in an unpermitted debris basin in an area deed restricted for public open space and below Temescal Ridge, a prominent ridge in the southern portion of the Santa Monica Mountains and Topanga State Park (Exhibit #4). The Temescal Ridge Trail follows this ridgeline and connects to other trails in the park.

The unpermitted development does not minimize alteration of natural landforms and is not sited and designed to protect the scenic and visual characteristics of the surrounding area, and contributes to a cumulative adverse impact of increased development along the canyon and canyon slope. As such, the unpermitted development is inconsistent with Section 30251.

The unpermitted development continues to impact Topanga State Park and its associated habitat and recreational values, the scenic resources of this area, and will lead to continued alteration of natural landforms.

#### **iv. Unpermitted Development is Causing Continuing Resource Damage**

The unpermitted development is causing continuing resource damage, as defined by §13190 of the Commission's regulations.

##### **a) Definition of Continuing Resource Damage**

The term "continuing" is defined by Section 13190(c) of the Commission's regulations as follows:

*"Continuing", when used to describe 'resource damage', means such damage, which continues to occur as of the date of issuance of the Restoration Order."*

The unpermitted development remains on the subject property and is being maintained by Mr. Fryzer. The denied unpermitted development continues to impact the public recreational area, scenic resources, and natural landforms on the subject properties. The additional unpermitted development (grass turf, palm trees, sand, fencing, and concrete paving) constructed on the subject properties after the Commission's denial further continues the impacts to coastal resources. As described below, such unpermitted development is causing impacts to resources protected by the Coastal Act that continue to occur as of the date of this proceeding and damage to resources is "continuing" for purposes of Section 30811 of the Coastal Act.

Section 13190(a) of the Commission's regulations defines the term "resource" as it is used in Section 30811 of the Coastal Act as follows:

*"Resource" means any resource that is afforded protection under the policies of Chapter 3 of the Coastal Act, including but not limited to public access, marine and other aquatic resources, environmentally sensitive wildlife habitat, and the visual quality of coastal areas."*

The term "damage" in the context of Restoration Order proceedings is provided in Section 13190(b) as follows:

*"Damage" means any degradation or other reduction in quality, abundance, or other quantitative or qualitative characteristic of the resource as compared to the condition the resource was in before it was disturbed by unpermitted development."*

In this case, the damage is the continuing degradation of Topanga State Park and its associated habitat and recreation values, scenic resources, and the alteration of natural landforms. The damage caused by the development, which is described in the above paragraphs, satisfies this regulatory definition.

**b) Description of Continuing Resource Damage on the subject property**

The unpermitted development is causing the ongoing adverse impacts to coastal resources that are described in subsection iii, above. The area disturbed by the unpermitted development is visible from Topanga State Park and the Temescal Ridge Trail. As constructed the unpermitted debris basin, the unpermitted fill within the basin, and the construction of a private golf chipping and putting facility continues to impact the scenic qualities of this area and does not minimize natural landform alteration. Furthermore, the unpermitted removal of coastal sage scrub and chaparral and the unpermitted installation of grass turf, palm trees, paving, fencing, and extensive grading continues to impact native plant and animal species of the Santa Monica mountains. As long as the landowner and/or Mr. Fryzer continues to maintain the unpermitted development, these impacts will continue to occur. The unpermitted development has taken place adjacent to Topanga State Park, on lands that are deed restricted and dedicated for public open space, on lands that were maintained as open space lots with clear restrictions on development, and in an area of significant scenic resources, located on portions of Lot G and Lot 41 of Tract 32184 in the Pacific Palisades area of the City of Los Angeles, inconsistent with the Coastal Act and the underlying permit conditions.

**E. California Environmental Quality Act (CEQA)**

The issuance of Cease and Desist and Restoration Orders to compel the removal of the unpermitted development and restoration of disturbed areas with restorative grading and revegetation of native plant species is exempt from any applicable requirements of the California Environmental Quality Act (CEQA) of 1970 and will not have significant adverse effects on the environment, within the meaning of CEQA. The Cease and Desist and Restoration Orders are exempt from the requirement for the preparation of an Environmental Impact Report, based on Sections 15060(c)(2) and (3), 15061(b)(2), 15307, 15308 and 15321 of CEQA Guidelines.

**F. Respondents' Defenses**

Headland Properties Associates have agreed to a Consent Cease and Desist and Restoration Order whereby they waived their rights to contest the issuance of the Orders and present defenses or evidence at a public hearing to contest the issuance and enforceability of these Consent Orders.

Mr. Fryzer did not agree to a Consent Order and therefore has not waived his right to present defenses. Section 13181(a) of the Commissions Regulations states, in part:

*"The notice of intent shall be accompanied by a 'statement of defense form' that conforms to the format attached to these regulations as Appendix A. The person(s) to whom such notice is given shall complete and return the statement*

*of defense form to the Commission by the date specified therein, which date shall be no earlier than 20 days from transmittal of the notice of intent.”*

As of the date of this report, Mr. Fryzer has not responded to staff's allegations as set forth in the February 20, 2003 NOI. The final date for submittal of the statement of defense form (“SOD”) was March 12, 2003. On March 7, 2003, Mr. Fryzer requested an extension of time to submit a response to the February 20 NOI. On March 12, 2003, the Executive Director granted a 30-day extension of time to submit the SOD, giving Mr. Fryzer no later than April 11, 2003 to submit such a response. Mr. Fryzer did not submit the SOD by the April 11, 2003 deadline. Since the completion of Section 13181's statement of defense form is mandatory, Mr. Fryzer has failed to raise and preserve any defenses that he may have.

#### **G. Actions in Accordance with Statutory Authority**

The statutory authority for issuance of this Cease and Desist Order is provided in Section 30810 of the Coastal, which states, in relevant part:

- (a) If the Commission, after public hearing, determines that any person...has undertaken, or is threatening to undertake, any activity that 1) requires a permit from the commission without first securing the permit or 2) is inconsistent with any permit previously issued by the Commission, the Commission may issue an order directing that person...to cease and desist.*
- (b) The cease and desist order may be subject to such terms and conditions as the Commission may determine are necessary to ensure compliance with this division, including immediate removal of any development or material...*

The statutory authority for issuance of this Restoration Order is provided for in Section 30811 of the Coastal Act, which states the following:

*In addition to any other authority to order restoration, the commission...may, after a public hearing, order restoration of a site if it finds that the development has occurred without a coastal development permit from the commission... the development is inconsistent with this division, and the development is causing continuing resource damage.*

The procedures for the issuance of Cease and Desist and Restoration Orders are described in the Commission's regulations in Sections 13180 through 13188 and 13190 through 13197 of the California Code of Regulations, Title 14. Section 13196(e) of the Commission's regulations states the following:

*Any term or condition that the commission may impose which requires removal of any development or material shall be for the purpose of restoring the property affected by the violation to the condition it was in before the violation occurred.*

Accordingly, the purpose of these Cease and Desist and Restoration Orders is to order removal of unpermitted development and restoration of the subject property to the conditions that existed prior to the occurrence of the unpermitted development described below.

Staff recommends that the Commission issue the following Cease and Desist and Restoration Orders to Mr. Fryzer and the following Consent Cease and Desist and Consent Restoration Orders to Headland Properties Associates, LP:

**CEASE AND DESIST ORDER NO. CCC-04-CD-09 &  
RESTORATION ORDER NO. CCC-04-RO-03**

Pursuant to its authority under Public Resource Code §30810 AND §30811, the California Coastal Commission hereby orders and authorizes Joseph Fryzer, his agents, contractors and employees, and any person acting in concert with any of the foregoing (hereinafter "Fryzer") to cease and desist from maintaining on the subject property any structures or other development constructed or erected without a Coastal Development Permit and/or inconsistent with Coastal Development Permit A-381-78, as amended and to ensure that the subject properties are restored in accordance with Consent Cease and Desist Order No. CCC-04-CD-08 and Restoration Order No. CCC-04-CD-02 (hereinafter "Consent Orders"), attached as Exhibit 1. Accordingly, Fryzer shall, within 30 days of its issuance, fully comply with paragraphs A, B, C, D, and E as follows.

- A. Fryzer shall allow Headland Properties Associates, LP and all their employees, agents, and contractors access across Lot 81, Tract 32184 to reach Lot 41, Tract 32184 and Lot G for the purpose of conducting the restorative work on the subject properties and performing any maintenance or monitoring required by the Consent Orders.
- B. Fryzer shall not block or impede the ability of Headland Properties Associates, LP to perform and carry out the approved Restoration Plan consistent with the Consent Orders.
- C. Fryzer shall cooperate with the implementation of the Restoration Plan prepared by Headland Properties Associates, LP as required in Consent Cease and Desist Order No. CCC-04-CD-08 and Consent Restoration Order No. CCC-04-RO-02.
- D. For the duration of the restoration project, including the monitoring period, Fryzer shall allow the Executive Director of the Commission, and/or his/her designees access to Lot 81, Tract 32184 for purposes of inspecting the subject property to assess compliance with the Cease and Desist and Restoration Order, subject to twenty-four hours advance notice.
- E. Fryzer shall ensure that all components of the Consent Orders are undertaken and completed including, but not limited to, removal of unpermitted development and implementation of the Restoration Plan, grading plans, landscaping plans, and erosion control plans, consistent with all requirements and deadlines contained in the Consent Orders.

## **I. Persons Subject to the Orders**

Joseph Fryzer, and his agents, contractors and employees, and any persons acting in concert with any of the foregoing.

## **II. Identification of the Property**

The property that is subject to these Orders is a portion of Lot G (a deed restricted open space lot located east of Tract 32184) that was not accepted by the State of California and Lot 41 of Tract 32184 (an interior tract open space lot) Pacific Palisades, City and County of Los Angeles.

## **III. Description of Unpermitted Development**

The development that is the subject of these Consent Orders includes the unpermitted construction of an approximately 1,040 cubic yard capacity debris basin, 2) demolition of the unpermitted basin by removal of a concrete lining and filling approximately half of the unpermitted basin with earth creating an extension of a flat building pad, 3) unpermitted placement of grass turf, palm trees, sand, fencing, and concrete paving on the filled basin/building pad extension, and 4) construction of a private golf chipping and putting area.

## **IV. Effective Date and Terms of the Orders**

The effective date of these Orders is the date the Cease and Desist and Restoration Orders are issued by the Commission. These Orders shall remain in effect permanently unless and until modified or rescinded by the Commission, or deemed by the Executive Director to be in complete compliance with all terms and conditions of these Consent Orders.

## **V. Findings**

The Orders are issued on the basis of the findings adopted by the Commission at the September 8, 2004 hearing, as set forth in the attached document entitled "Recommended Findings for Consent Cease and Desist Orders CCC-04-CD-08 and Consent Restoration Order CCC-04-RO-02 & Cease and Desist Order CCC-04-CD-09 and Restoration Order CCC-04-RO-03".

## **VI. Compliance Obligation**

Strict compliance with the orders by all parties subject thereto is required. Failure to comply strictly with any term or condition of the orders including any deadline contained in the orders will constitute a violation of this order and may result in the imposition of civil penalties of up to SIX THOUSAND DOLLARS (\$6,000) per day for each day in

which such compliance failure persists, in addition to any other penalties authorized under Section 30820.

## **VII. Deadlines**

Deadlines may be extended by the Executive Director for good cause. Any extension request must be made in writing to the Executive Director and received by Commission staff at least 10 days prior to expiration of the subject deadline.

## **VIII. Appeal**

Pursuant to Public Resources Code Section 30803(b), any person or entity against whom the orders are issued may file a petition with the Superior Court for a stay of this order.

Executed in \_\_\_\_\_ on \_\_\_\_\_, on behalf of the California Coastal Commission.

Peter Douglas, Executive Director

By: \_\_\_\_\_